

SUBJECT: Appointing a receiver for a utility violating a district court final judgment

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 8 ayes — Larson, Phelan, Ashby, Kacal, T. King, Lucio, Nevárez, Price

0 nays

3 absent — Burns, Frank, Workman

WITNESSES: For — Connie Esparza, Castlewood; Steven Adame Sr., Marva Humber, and Carmen Schnur, Castlewood Civic Club; Patrick LeBlanc and Wanda LeBlanc, Castlewood Subdivision; Jim Boyle; (*Registered, but did not testify*: Juan Deleon, Elvira Herrera, Mallory Herrera, Cipriano Ramon, Alex Rios, Antoonio Schnur, Belong Truong and Southivone Truong, Castlewood Civic Club; Raquel Deleon and Lee Gibson, Castlewood Subdivision; Richard Cantu and Veronica Sanches, East Aldine Management District; Ned Munoz, Texas Association of Builders; Leonard Aguilar)

Against — (*Registered, but did not testify*: Jess Heck, SouthWest Water Company; Lara Zent, Texas Rural Water Association; Charlie Schnabel)

On — Amy Davis and Emily Petrick, Office of the Attorney General; Tammy Benter, Public Utility Commission of Texas; Meaghan Bailey and Jess Robinson, TCEQ; (*Registered, but did not testify*: Anthony Grigsby, Office of the Attorney General)

BACKGROUND: Water Code, ch. 13 establishes regulations for rates and services of retail public utilities that provide water or sewer services. Sec. 13.412(a) requires the attorney general, at the request of the Public Utility Commission (PUC) or the Texas Commission on Environmental Quality (TCEQ), to bring suit to appoint a receiver to collect the assets and carry on the business of a water or sewer utility that:

- has abandoned operation of its facilities;

- informs PUC or TCEQ that the owner is abandoning the system;
- violates a final order of PUC or TCEQ; or
- allows its property to be used in violation of a final order of the PUC or the TCEQ.

Water Code, ch. 7 establishes TCEQ administrative enforcement abilities for entities including water and sewer utilities.

Health and Safety Code, ch. 341 establishes minimum standards of sanitation and health protection measures for entities including retail public utilities.

DIGEST: CSHB 294 would require the attorney general, at the request of the Public Utility Commission or the Texas Commission on Environmental Quality, to bring suit to appoint a receiver to collect the assets and carry on the business of a water or sewer utility that violated a final judgment issued by a district court in a suit brought by the attorney general under Water Code, ch. 13 or ch. 7, or Health and Safety Code, ch. 341.

The bill would take effect September 1, 2017.

SUPPORTERS SAY: CSHB 294 would address pervasive water issues experienced in the unincorporated area of Harris and other counties by subjecting certain bad actor water and sewage utilities to receivership procedures to ensure they could have their facilities taken over by state agencies. These areas have been plagued by poor water quality and periodic loss of service to homes and schools, but service options can be limited in unincorporated areas. Some residents of unincorporated Harris County live on fixed incomes and cannot afford to sue investor-owned utilities, relying instead on state agencies. However, these agencies are limited to recommending receivership only in certain circumstances.

The bill would add language to existing law governing receivership to ensure that even if a utility managed to avoid outright violation of orders from the Public Utility Commission or Texas Commission on Environmental Quality, it would lose management of its facilities if it

violated a district court final judgment. The bill would apply only to utilities that managed to do the bare minimum to avoid receivership. Although a utility in Harris County was appointed a receiver, a similar problem could arise in the future.

CSHB 294 would address concerns about the filed bill by removing language that would have revoked certain management abilities of a utility and adding language that instead would expand on current receivership procedures.

OPPONENTS
SAY:

CSHB 294 is unnecessary because the utility in question already has been appointed a receiver through the Texas Commission on Environmental Quality.

NOTES:

The committee substitute differs from the filed bill in that:

- HB 294 as introduced would have created a process to appoint a temporary manager and to revoke certificates of public convenience and necessity for certain utilities; and
- CSHB 294 would establish receivership procedures for water or sewer utilities that violated a district court's final judgment.

A companion bill, SB 1115 by Garcia, was referred to the Senate Committee on Agriculture, Water, and Rural Affairs on March 7.